HOW TO PUT THE PEOPLE BEHIND THE LAW

BY THE REV. PERCY STICKNEY GRANT

A NEW YORK judge who halted for a moment in Broadway recently to gaze up at a sky-scraper, was prodded by a policeman and told to "Move on." He moved on. His dumb obedience illustrated the attitude toward the law of the average American, who, while he may fume or grumble or prevaricate, nevertheless accepts a law pretty much as if it came from Sinai. There is a good deal of English law-abidingness inborn in the old-time American, hence his astonishment and alarm when he hears his laws challenged as fundamentally unjust.

But that is just what is happening to-day. Our laws are disparaged, even scoffed at, by large numbers of our fellow-citizens. President Samuel Gompers, Vice-President John Mitchell, and Secretary Frank Morrison, of the Federation of Labor, officers of the largest body of organized working-men in the country, are still under serious charges of contempt of court. The redoubtable Mr. Gompers is reported to offer as his solution of the matter the impeachment of Judge Wright.

The Socialist Party, in its Chicago platform, calmly recommended the dissolution of the United States Senate and of the Supreme Court.

Trade-unionists and Socialists combined flew to the defense of John J. McNamara, the secretary-treasurer of the International Association of Bridge and Structural Ironworkers, accused of complicity in an alleged dynamite explosion, greatly to the astonishment and disgust of the well-to-do classes who regarded McNamara at the moment of his arrest as virtually proven guilty of a string of dynamite outrages.

If in the large, as represented by their unions and programmes, the people flout the law, their disrespect is even more apparent when they speak for themselves. The working-man's label for our government is a "plutocracy," "an oligarchy," "a government by injunction"—one of tyranny, not of law. He laughs at law and quotes you the kidnapping of Heywood, Moyer, and Pettibone from Colorado into Idaho, and its subsequent "legalization" by the Supreme Court, which found it could not inquire into the circumstances of a kidnapping by civil officials. Or he echoes Mr. Gompers's seditious regret, "What we should have done then was to have pursued the kidnappers." Or, he refers, still laughing, to Warren's little joke, Fred Warren, the editor of the *Appeal to Reason*, a Socialistic weekly with 500,000 circulation, who, to point the moral of the Idaho "legalized kidnapping," advertised upon his envelopes a reward for the kidnapping of ex-Governor Taylor, charged with the murder of Governor Gobel, from Indiana into Kentucky, which resulted in the Socialist editor's sentence to imprisonment and in President Taft's petulant but rejected pardon.

"Disregard for law is fast becoming an American characteristic," is the finding of the National Education Association in a late report on a system of moral instruction for the public schools.

President Taft, in a speech at the Academy of Political Science, in New York, last spring, referred to the "lighter regard for law and its enforcement in America as compared with England, and a consequent less rigorous public opinion in favor of the punishment of crime."

President Hadley, of Yale, urges as a cure for our present low standards of public morality a higher reverence for law, which he thinks the country sadly lacks.

This is a new condition of things in America, especially this bitter, working-class feeling against the law—unless we compare it to the antagonism evinced by the abolitionists toward the slave-laws in the years before the Civil War. The working-people to-day in America are not behind the laws; they do not regard them as *their* laws, but as the laws of "hostile interests." It follows naturally that they distrust their law-makers and even their courts. That is the meaning of their demand for the initiative, the referendum, and the recall (even of judges). These new instru-

ments, they hope, will rescue for them their lost share of political power; will resurrect representative government and reinstate justice.

The dissatisfaction of our working-classes with the blind goddess must not be confused with the mob spirit that often sweeps away "our best citizens" when a negro is concerned, nor with the legal play of "the criminal rich." It is not the anarchist's revolt against all law, or the well-understood unpopularity of the law with criminals which the early American poet Trumbull wittily hit off:

> "No man can feel the halter draw
> With good opinion of the law."

There are thousands of critics of our laws and courts who are neither masked and cowardly fiends, nor rich law-breakers, nor anathematizers of law, nor criminals; but progressive citizens possessed with a humane passion for a profounder justice. Even the dean of one of our leading law schools in a speech before a body of lawyers, including President Taft, is reported recently to have said that "the free democratic government that prevailed here was neither free, nor democratic, nor a government." His utterance is significant of the attitude of many thoughtful men. A recent incident would have been considered as an omen of dire portent in the time of the Cæsars. The scales of the Goddess of Justice on the City Hall of the Metropolis of America fell from her hands and were broken.

Working-men are convinced that both laws and courts are against them. They are astonishingly well informed, too, as any one who hears them talk can testify, about legislation and about judicial decisions that affect their class. They are not, in the commonly accepted phrase, "deceived by agitators and demagogues," nor are they stirred by "vague unrest." Their complaints are clear and specific. The laws and the courts are against them, but are for their employers.

To begin with, the working-people see that proposed legislation in their favor or for their protection is fought by wealth. Many cases are on the tip of their tongue. For instance, here in New York, Fire Commissioner Waldo's order for more fire escapes upon factories was fought in the courts by the manufacturers. The law requiring owners of tenement-houses to put running water upon every floor

of the tenement-houses was bitterly opposed as unconstitutional even by a great religious corporation. The present Tenement-house law was fought in rather a disorganized way by the vested interests, which have since organized most effectively. The efforts of organized labor to secure an eight-hour day on all public works was also bitterly opposed. The fight waged at Albany in the last session of the legislature, against the bill limiting the working-hours for women and children to fifty-four hours per week, and also against the law bringing mercantile establishments more fully under the control of the Department of Labor, are other instances. Then, again, laws beneficial to working-people are passed, but are not enforced. Illustrations from the Empire State are, perhaps, typical. The New York Labor Law requires the provisions of 250 cubic feet of air-space for every employee in a factory from 6 A.M. to 6 P.M., but there has never been any general provision for placarding the premises stating the number of employees that may be permitted to work in each room.

Referring to the enforcement of the building-laws, the Wainwright Committee on Employers and Liability says:

"It was repeatedly brought out in the testimony presented to us that those sections of the labor-law dealing with scaffolds, the covering of floors, the fencing of shafts and openings, and the protection of workmen are flagrantly violated, particularly in New York City."

The laws, it is further claimed, are interpreted by the courts in a fashion hostile to labor. The following is a partial list of important decisions by high courts.

"Refusing to haul cars a conspiracy. T. A. & N. M. Ry. *vs.* Pa. Co. 54 Fed. Rep. 730, April 3, 1893. Taft, Circuit Judge."

"Quitting work is criminal. Same, April 3, 1893. Taft, Circuit Court."

"Arbitration unconstitutional. Supreme Court of U. S., in Adair *vs.* U. S., decided January 27, 1908, 208 U. S., 161."

"A strike is unlawful. U. S. *vs.* Cassidy et al, 67 Fed. Rep. 698, 1895."

"A workman considered 'under control.' T. A. & N. M. Ry. *vs.* Pennsylvania Co. et al., 54 Fed. Rep. 746, March 25, 1893, Ricks, Circuit Judge."

"Effort to unionize shop unlawful. Lowe et al *vs.* Lawler et al, 208 U. S. 274, February 3, 1908."

"Unlawful to threaten a strike. John O'Brien *vs.* People ex rel. Kellogg Switchboard & Supply Co., 216 Ill., 354, June 25, 1905."

"Unlawful to ask reasons for discharge. Wallace *vs.* Georgia, Carolina & Northern Ry. Co., 94 Ga., 732, June 18, 1894."

"Legal to jail a man a month without trial. Oregon Supreme Court. Longshore Printing and Publishing Co., Appt. *vs.* George H. Howell et al, 26 Ore. 527."

"Constitutional to discharge a man for belonging to a union. Wm. Adair *vs.* United States, 208 U. S. 161, January 27, 1908."

"No remedy for labor except personal suit. Massachusetts Supreme Judicial Court. Dianah Worthington et al Appts. *vs.* James Warring et al, 157 Mass., 421."

Another complaint continually heard among working-men is that laws passed by the people's representatives are nullified by supreme courts, and that the courts thereby assume legislative powers. L. B. Boudin, in the *Political Science Quarterly,* for June, puts the matter clearly:

"Each case is supposed to stand 'on its own merits,' which, translated into ordinary English, simply means that each law is declared 'constitutional' or 'unconstitutional' according to the opinion the judges entertain as to its wisdom. Since there are no longer any set rules by which the judges can be guided, since they are left to determine the propriety and wisdom of laws according to the canons of politics and statesmanship, they naturally exhibit those differences of opinion which we expect to find in legislative bodies."

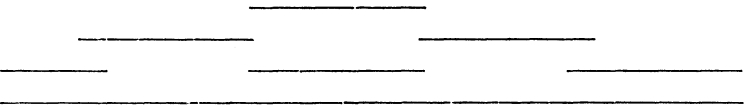
Another fact that weakens the popular confidence in the judiciary is that our highest courts rarely pronounce a unanimous decision. The "dissenting opinion" has educated the American citizen. He does not forget that he is nominally governed by majorities, but he has come to believe that on the bench the opinion of the majority need not necessarily be in accordance with justice. Nor ought justice, he thinks, in a court of nine, like our Supreme Court, to depend upon one man.

The people are confused, too, by the conflict of opinion between different courts as well as between members of the same court. Let me cite a case prolific of amused comment: In the year 1910 Basso, a bootblack, in the basement of one of the business blocks of Rochester, refused to serve Burks because the latter was a negro. The law of the State of New York requires full and equal accommodation in hotels and "other places of public accommodation." The question, therefore, was: Is a bootblack-stand a place of "public accommodation"? The first court said, "no"; the second, "yes"; the third, "no"; the fourth, "yes, but."

The immunity of wealthy criminals has helped to disillusion the man of the dinner-pail. The assistance given by the legal profession to ambitious and desperate men in securing, through our legislatures, statutes favorable to their enterprises, but deadly to public interest, has contributed to destroy the people's respect for the majesty of the law. They

discover through "investigations," let us say, that a great wrong has been done. Millions of money cannot be accounted for; vast expenditure is recorded without adequate showing in property values; what seems a gigantic robbery has been perpetrated at the expense of the public: yet, to the amazement of the simple-minded, the officials and owners of the corporations, who are well known, show no signs of fear and eventually go unpunished.

A famous district attorney explained to me how this happens. He took some matches from a match-stand on the table we were sitting at, and arranged them as you see the lines in this diagram:



He said:

"Suppose each one of these matches to be a law: suppose, then, our friend, whom everybody believes to have committed great frauds, is undertaking to carry out plans that these laws oppose. He approaches one of the laws and finds that it stands firmly in his way like a fence. If he were to lay his hand upon that law or try to jump over it, he would immediately be nabbed and prosecuted, probably successfully. But he doesn't so much as lay a finger on the law. Under the guidance of his legal adviser, he merely passes along in front of it until he finds a way around. He thereupon proceeds to find a gap between other laws, through which he just as freely progresses. Very likely he is again confronted by further obstacles, but he merely repeats the same cautious and successful practice. He does not interfere with the law, for that would render him liable, but he gets around the law. If, finally, he runs up against a law which, as far as can be seen, has no hole in it, and really bars his way, he has only to secure or to call upon powerful political backing, to pass a bill favorable to his objects, which his legal adviser draws up, and so he proceeds—*always according to law.*"

The working-people, furthermore, through their most "trusted representatives" who are labor leaders, to our shame it has to be admitted, persistently demur at the class spirit in which the law is administered. High executive officials, courts and law officers, it is contended, are swept along by this class bias, consciously or unconsciously, into grossly illegal action. A case in point is the arrest of McNamara.

In a letter addressed by Victor L. Berger (the first Socialist Member of Congress), to the Committee on Rules

of the House of Representatives, McNamara's arrest, leaving out of consideration, for the moment, his guilt or innocence, is analyzed in every particular as illegal.

"McNamara was not a fugitive from justice, and the Governor of Indiana did not take the trouble to make sure of the facts. The police judge had no proper jurisdiction, since the law specifically provides that the accused shall be brought 'before the Circuit, Supreme, or Criminal Court.' The police and private detectives who made the arrest had no legal right to do so, since the law provides that such arrests must be made by a sheriff or constable. The seizure of McNamara's private papers was illegal. The Indiana statutes (Sec. 56, act of 1905) define the right of Search and Seizure. No such act as McNamara's abduction is therein permitted. Amendment 4 of the Federal Constitution was also violated."

In a public letter dated May 10, 1911, dealing with the arrest, eight International Trade Unions with headquarters at Indianapolis ask the American public, "Can our persons be ruthlessly violated, our legal rights ignored, and our offices officially burglarized?"

The working forces of the country are sore over past encounters with their employers, in which they have been, as they believe, outrageously treated. Under the editorial caption, "No Confidence in the Courts," a member of the McNamara Defense Committee published a letter September 7, 1911, in the New York *Evening Post.* Addressing the editor, the writer says:

"Your attitude presupposes that the unions and their friends have absolute confidence in the methods of our courts. Let me tell you that such confidence does not exist. Nor would it be warranted in the light of past events.

"Let us look back upon some of the happenings of the last decade. Have you forgotten the Idaho Bull Pen? Forgotten Sherman Bell of Colorado and his exclamation: 'To hell with habeas corpus! We will give them post-mortems instead!' Forgotten all the lawless acts of the Mine Owners' Association, including the wrecking of the office of a labor paper in Victor?"

Now this shows an ugly mood, and whether or not the facts justify it, the mood itself is the worst fact of all.

In short, the working-man contends that long after the destruction of monarchical forms of government, class-control still goes on even in a democracy; that far from "the majority governing for all," Mr. Taft's artless assumption, in reality a capitalist minority governs for itself alone. This skeptical position held by the people is fortified by the recent findings of economists who discover that aristocracies or power groups have an inevitable tendency

to re-establish themselves under new names, even in republics, and that everywhere dominant classes make the laws in their own interests.

Finally, the people perceive that justice and right are not identical. If you hear no other complaint voiced by the working classes against their employers, you will hear the accusation of hypocrisy. They do not practise in business, it is charged, the altruism of their religious faith, but look out only for number one, protecting themselves behind laws, against the plain promptings of humanity. In the ranks of labor there are thousands of men of good trades and good character who, while at their work, have been injured by accidents, and whose employers have resorted to every ingenuity of the law to avoid the payment of damages.

What is more, the people do not understand justice which is only the grist of legal machinery. Merely to receive the benefit of the law is not, in their opinion, to receive justice, which might well be, to their way of thinking, something better than the conclusive decision of the court of last resort. For instance, a Vice-Chancellor in Jersey City recently refused the consideration of "common sense," urged repeatedly by a litigant, and replied, "I never knew that the Court of Equity was supposed to supply sense to litigators. All it has to supply is justice." But, somehow or other, "common sense" and "a square deal" are popular synonyms for justice, and describe the only kind the masses believe in.

The confusion of legal and moral ideals is not strange, nor purely the result of ignorance. Not only is ideal right what the unsophisticated imagine to be the aim of the law, but it is actually what philosophers have depicted as justice in a true republic, and what, historically, the law of the Greeks, more nearly than Roman or English law, strove to display.

The law of Moses, too, knew no distinction between right and justice; there was only one law. Indeed, we may have the Bible largely to thank (or shall I say to blame?) for the persistent confusion in the popular mind of the moral and the legal. Simple minds in England and America have for centuries been fed out of the English Bible upon the idea that justice should be the same thing as right. To the common people, for instance, Solomon is not only the most splen-

did of kings and wisest of men, but the most just of judges; yet how candid and convincing his judgments! Ought we to be surprised if, after generations of picturesque Bible teaching, the people seem to have got it into their heads that justice should be identical with right?

The American working-man, then, like Henry James's American Princess Maggie Verver, is disconcerted by "the discovery that it doesn't always meet all contingencies to be right." The something more, over and above being right that in his case has to be considered, is the law; but owing to his straightforward way of looking at things, it is not to be imagined that right, in his opinion, should accommodate itself to law, but that law, as a matter of course, should be fitted to right.

The relation of justice to right needs much clearing up, more than has been given it, more, of course, than I have room for here. Even jurists who have studied the fundamentals of the law are on this point obscure. One school finds the origin of the law to be custom, and consequently the judge, as "an expert upon custom," dispenses not only justice but also right; that is, as understood by his contemporaries, since he is their spokesman. The other school finds the origin of law to be the sovereign power. In their view, justice and right meet within the definition of the institutions of the day. In a monarchy governed by the theory of the divine right of kings, justice and right proceed from the imperial will, and are as infallible, theoretically, as that which proceeds from Deity. In a democracy governed by the theory of social contract, justice and right are identical for the reason that the citizen, when he receives legal justice, gets all the right coming to him under his contract; in fact, all the right his contract knows anything about.

But the educated proletariate is asking for more than that; it demands a closer compatibility between justice and right, and would be perfectly willing to go outside the breast of the judge, or the will of the sovereign, or the contract of the citizen to find it. The working-man naïvely expects law, perhaps, to stand for that which among the Athenians the Goddess Themis embodied—abstract right as well as law and order.

Perhaps we can get at the relation of legal justice to moral right by a bit more of analysis and a historical glimpse. If law deals with what "is," and morality with

what "ought to be," then we can easily look back to a time when human intelligence was so undeveloped that its customs or laws entirely satisfied it. Usage went as far as conscience saw, because a very simple custom summed up their social and psychological experience. What *was* and what *ought to be* were one of necessity because the mentality of the time could not think them apart. With increasing intellectual scope, their later schism would be inevitable.

After all, what the working-man wants is not abstract right, which would be less human than old custom and would depend upon the vicissitudes of the metaphysical theories that established its standards. The working-man is seeking a positive ground for law in racial advantage as revealed by modern science. In short, the working-man, instead of always looking backward for his legal authority, proposes to look forward, and is declaring that whatever looms as for the best interests of mankind must be right and should be law. The object of the law, as he sees it, is not only to prevent injury, but also to create all sorts of new and higher values.

And why cannot the present without arrogance claim to be self-sufficient in knowledge and conduct? The tendency to explain every advance in moral position by reference to the past has been commented upon by Sir Henry Maine as "a curiosity of human nature." Mankind has seemed ashamed to see in his own times reasons for, as well as evidence of, advance. But we have now entered upon a new era whose characteristic is that it will honor the present. Its method will be to illuminate an old science by the new sciences; it will let light into law by opening windows from law into economics, hygiene, psychology, etc., etc. "The Rule of Reason" as applied in jurisprudence must eventually, it would seem, appeal to arguments only to be discovered in the broadest prospective advantages common to mankind. Charles Ferguson says:

> "That day is at hand in which it would be possible for a lawyer to stand up in court and say, 'I admit that I am not in line with the precedents; but I ask judgment on technical grounds. The law exists to mobilize the creative forces of society; and I am able to show that the case of my client is in line with the sound rules of city building.'"*

Now, the object of this article is to persuade the reader that nothing can be more threatening to a democracy than

* *The University Militant*, p. 31.

for the rank and file of the people to lack respect for their lawmakers and to harbor suspicion of their courts. Serious possibilities confront a government which permits a schism between its classes. From animadversions against the law, the step is an easy one to violation of the law; from lack of confidence in legal methods, the way is not a long one to their overthrow. The activities of our courts, on the other hand, are not so far removed from popular feeling that dissatisfaction among the masses with the attitude of the bench can be allowed to continue with no fear of consequences. Supreme Court decisions have, in the past, been momentous, as many men now living can testify. The Dred Scott decision helped to bring on the Civil War.

How can the people be put behind the law? What remedy can we apply to the increasing hostility between classes in our republic? Let us look first at simple and partial remedies.

Before proceeding, we must remember that we cannot expect the people to reverence law in the abstract; an abstraction cannot long retain the allegiance of a democracy. They will respect only beneficent laws and good lawmakers.

The people could be put behind the law to some extent by making them better acquainted with the law. This would be a method for which we have precedent in American history. The colonists knew their Blackstone. "The Men of '76" waged the Revolutionary War more upon legal technicalities than because of actual physical grievances. The orators of the Revolution could boast that every patriot was an embryo lawyer. After the outcome of the war, it was again the wide-spread knowledge of English law that made possible our Constitution.

Voices are continually heard to-day in people's assemblies and forums, often in broken English, expressing respectfully a pathetic desire to know more about the legal machinery of this country. They ask how laws are made; how state and national institutions can be changed. Lacking this knowledge, is it unnatural that ignorant or suspicious or aggrieved working-men, especially those from over-seas absolutism, still fancy themselves in the hands of tyrannical forces?

Why could not evening classes in the law be opened for working-people, where they might become widely acquainted with the subject-matter of law, and, at any rate, with their

legal rights? Besides night-schools for adults, law could also be taught in the high-schools—and, perhaps, in the last year of the grammar-school. Such law-studies in the public schools would give, too, a dignified and intelligent approach to citizenship.

The Twelve Tables were used by the Romans as a school-book for their children. If the Americans were to use the Constitution even as a "reader," its nature, at least, could be explained to future citizens who would learn that the Constitution is not a hard and fast contract between the States and the Federal Government—in other words, a dead document—but that such an agreement embodies, of necessity, the living law of the land, and consequently contains within itself an organic principle of growth which accounts for the constructive interpretations which, to the eyes of the uninformed, look like constitutional revision at the hands of the judiciary. Every child in the United States ought to be taught that the Constitution is not at any rate a boundary-stone, but more like a guide-post, and most like a tree well rooted in fertile soil.

Popularizing the study of law would do something to correct the people's attitude, for a knowledge of the law ought to disclose legal means out of alleged difficulties. Two prominent Socialists of my acquaintance were greatly surprised "to be shown" by a lawyer friend of mine how many of the things their party demanded could be obtained under existing laws. One of the Socialists—the more revolutionary of the two—is now studying law, and intends to practise it.

Greater knowledge of the law might correct misconception even in high places. For instance, it might prove to Senator Borah, of Idaho, that it is impossible for a judge "to consider nothing but the terms of the written law." There is usually more than one opinion of the meaning of a statute. The first question is, what does it mean? A judge's mind will interpret a law under the influence of his culture, temperament, and sympathies; for his mind works just as ours work. A decision with him or with us is the resultant of all the mental forces.

There is another method by which the people could be rallied behind the law; suppose bills of the first importance in Congress and in State legislatures had public hearing before great popular audiences, where the bills could be

explained by their promoter and questions might be asked and answered. Public discussion is the essence of peaceful progress in a democracy, but it is rarely afforded in legislative debate, which is too often only a demonstration of power between contending forces, with as little honest controversy as is shown in a tug-of-war contest — worse still, a tug-of-war when an anchor-man's palm has been "greased." With more public discussion we should need less public investigation. Honest public education about pending measures would have a tendency to prevent special legislation hostile to public interest, and would develop among the people sympathy for lawmakers and approval of their work—the agreeable confidence that the laws enacted were *their own* laws.

Again, why cannot laws be drafted in such clear language as to be intelligible to anybody who can read and understand English? A deal of litigation would be unnecessary and much distrust of the law avoided, if in every legislature there were an official sufficiently a master of the vernacular to frame bills whose phraseology would not itself be a source of misunderstanding. "Half the perplexities of men," says the Duke of Argyll, "are traceable to obscurity of thought hiding and breeding under obscurity of language." Even the New York *Times* is irritated at the delays and misunderstandings due to the obscurity of legal language, and lately declared, "It would be well if the slang and jargon of the law could be reduced to terms of our common speech."

We must ask our legislators—so many of whom are lawyers—and our judges as well, to know something more than the law. Laws are framed and tribunals determine justice, not only according to legal, but also according to political, social, and economic principles. The judge who believes, with our new political economists, that poverty can be abolished will hand down different legal opinions from his associate who still holds to the law of diminishing return, or that poverty is God's judgment on incapacity. Many lawyers of a humane interest in the uplift of the working-classes are unfortunately halted upon the threshold of social reform by a fear, inspired by their old college political economy and the ghost of Doctor Malthus, that our food supply is inadequate and must necessarily fall to some in starvation quantities if others are to have enough.

At a meeting of the Association for Labor Legislation, in April, 1909, Prof. Ernest Freund declared that in his opinion a systematic study of industrial hygiene would revolutionize the attitude of the courts toward labor legislation.

But hygiene is not the only study besides law which a lawyer ought to know. Biology, history, and sociology would teach him that all material things and all human institutions are plastic to evolutionary forces; that law is no exception, and that it will still further change.

If the people believe that the laws and the courts are against them, and if they demand a change, then one of the first things to be done is for the conservative classes to get used to the idea that change is not necessarily catastrophic.

Twenty-five years ago I was walking across the quadrangle of a theological seminary with the foremost educator in America. As we passed the library I made some remark about the oblivion that quickly envelops most religious literature: "Yes, the minister's library soon loses its value, but so does the doctor's. Only law stands unchanged." To-day an authoritative writer upon the law freely admits to me that the fundamental laws of property are changing. Yes, even the laws of contract—that stronghold of conservatism—are undermined.

The theological library and the law library may not be approaching a common obsolescence, but those concerned with law must acknowledge that unexpected changes in their science are under way. But change does not spell revolution—that is, destructive revolution. Changes take place in political and religious institutions long before they are named. A name does not make a change dangerous. Lowell was a good constitutional lawyer when he wrote:

> "We shape our courses by new risen stars,
> And still lip-loyal to what once was truth
> Smuggle new meanings under ancient names,
> Unconscious perverts of the Jesuit, Time.
> *Change is the mask that all continuance wears*
> To keep us youngsters harmlessly amused."

Out of the midst of the Supreme Court itself comes testimony to the change our laws are undergoing. Justice Holmes encouragingly remarks

"that it is unavoidable that judges base their judgments upon broad con-

siderations of policy, to which the traditions of the bench would hardly have tolerated a reference fifty years ago."*

Mr. George Gordon Battle, after a valuable review of notable decisions affecting labor, concludes that recent decisions are, on the whole, more sympathetic, and are more disposed to take into consideration public policy.†

Let us now turn to the more serious and fundamental method of putting the people behind the law, and of closing the growing chasm between classes in our democracy.

We cannot put the people behind the law merely by taking power away from the capitalistic class and by giving it to the working class. Our problem would not be solved by transferring political power from the capitalistic minority to the proletariate majority. Working-class control would only swing the pendulum to the other extreme and give us working-class justice, just as now we have a capitalistic justice. And we are well enough aware that one control, if we are talking about arbitrary exercise of class power, would be as bad as another. A working-class control would be as unjust as a capitalistic control, for it, too, would be one-sided.

The working-class outlook, on the whole, it has unfortunately to be noted, is not broad, and some of the decisions adverse to labor we are obliged to account for (and this is admitted by labor men themselves) as the result of immature legislation undertaken at the hasty and querulous call of labor. Some working-men blame their own class for the adverse judicial decisions, and even contend that most of the labor laws declared unconstitutional have been declared so justly. The trouble with the laws, they say, is not so much with the courts as with labor itself, or its legal representatives; for the trouble is in the instincts of the working class. The instincts of the working class are to procure some sort of legislation that will protect them, and that will injure, somehow or other, the corporations, by giving small businesses advantage over corporations. Much of the legislation in the interest of labor has, as can be seen, discriminated against corporations and also in favor of local labor as against race and nationality. Not only was it easier for the courts, but incumbent upon them, to declare such legislation unconstitutional. The fault may lie in the

* *The Common Law*, p. 78.

† *Address before the People's Forum*, p. 16.

wrong instincts of the working class, or in the attempt on the part of legislators to satisfy labor by passing some sort of legislation in its favor, but of such a nature as to make the declaration of its illegality certain.

If capitalistic control of legislation is intolerable, and if working-class control would be no better, must we not look for a mean between capitalistic control and working-class control; that is to say, for a relation between the two that will give to neither undue power?

In other words, we are confronted by the problems of a heterogeneous population, diverse in tradition, in education, and in economic condition. The great question is: How can we fuse together the diverse and warring elements of our population? For "a nation may be intact," says Homer Lea, "only so long as the ruling element remains homogeneous."* By the very terms of a democracy, however, where the ruling class is all the people, its citizenship is pledged to an ideal homogeneity. If, therefore, we would save our national existence, every effort must be made to promote such an understanding and interchange, such a just distribution of wealth and honors as shall truly recreate, out of our conflicting classes in the United States, a homogeneous people. This is a titanic task both materially and morally, but it is the task before the United States if it is to maintain its existence as a self-governing nation.

How can we create a homogeneous nation? is the vital question for America. How can we secure a mean between capitalistic control and working-class control? Can this be done in any other way than by raising the material status of the working classes and by reducing the private and arbitrary control of wealth?

The United States can only be given necessary homogeneity by reducing the disparities between rich and poor. "No nation," says Professor Patten, "can have a normal growth with poverty-stricken neighbors trying to displace it."† How much less can a self-governing nation have a normal growth while poverty-stricken classes are attacking it from within.

A constant taunt heard upon the tongues of Socialist orators is that capital never gave anything willingly to labor; that concessions have been fought for and wrenched

* *The Valor of Ignorance*, p. 124.
† *The Social Basis of Religion*, p. 186.

by fear or by force. The story of specific legislation seems in detail to bear out this allegation. But, viewed in a large way, there is a mitigating answer. The loss of class assurance was, just before the French Revolution, an increasing appearance in the aristocracy. If the growing doubt of itself had had great leadership, modern history might have had a painless birth, and progress in the nineteenth century no reaction. It is a question whether power can be snatched from classes which have monopolized it until they have become unnerved by self-distrust. A weakening of self-confidence may be observed to-day in the capitalistic attitude in America, and, at the same time, an increasing sympathy for labor among the intellectuals. Here, then, we have a mental and moral medium in which alone class concession may be secured and fixed. This is the field, too, in which wider education, mutual confidence and sympathy ought to be most helpful in adjusting popular grievances.

Sir Henry Maine noted the conflict between law and progress. "Law," he said, "is stable; the societies we are speaking of are progressive. The greater or less happiness of a people depends on the degree of promptitude with which the gulf is narrowed."

PERCY STICKNEY GRANT.